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8 Attorneys for Plaintiff, RONALD RICHMAN

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 RONALD RICHMAN,

13 Plaintiff,

14 vs.

15 UNITED STATES OF AMERICA, et al.

16 Defendants.

) Case No. C07-05317 JCS

)
) **DECLARATION OF WILLIAM G.**
) **MCDEVITT IN OPPOSITION TO**
) **MOTION TO DISMISS FOR LACK OF**
) **SUBJECT MATTER JURISDICTION**
) **[FED. R. CIV. P. 12(b)]**

) **Date: August 7, 2008**

) **Time: 8:00 a.m.**

) **Place: Ctrm 9, 19th Floor**

) **Judge: Hon. William H. Alsup**

17
18 I, William G. McDevitt, declare:

- 19 1. I am one of the attorneys for plaintiff herein;
- 20 2. Plaintiff was involved in a rear-end automobile accident caused by an employee
- 21 of the U.S. Government on October 24, 2005;
- 22 3. I prepared a claim under the Federal Tort Claim Act on October 6, 2006. Page 2
- 23 of Exhibit A is a true and correct copy of the claim I prepared on October 6,
- 24 2006;
- 25

**DECLARATION OF WILLIAM G. MCDEVITT IN OPPOSITION TO MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION [FED. R. CIV. P. 12(b)]**

- 1 4. On October 11, 2006, my former secretary, Barbara Plaut, mailed the
2 administrative claim to the U.S. Dept. of Fish & **Wildlife Service** (emphasis
3 added), located in Sacramento, CA. Exhibit A, page 1, is a true and correct copy
4 of the cover letter sent by my former secretary to the aforementioned
5 governmental agency;
- 6 5. On October 24, 2007, plaintiff filed a complaint under the Federal Tort Claims
7 Act against the United States of America;
- 8 6. U.S. Attorney, Abraham Simmons, contacted declarant and met with declarant
9 at the U.S. Attorney's office in San Francisco;
- 10 7. At the meeting, Mr. Simmons claimed that the appropriate agency was Animal
11 & Plant Inspection Service, California **Wildlife Service** (emphasis added);
- 12 8. The administrative claim filed by plaintiff with the U.S. Dept. of Fish &
13 **Wildlife Service** (emphasis added) was never returned to plaintiff as required by
14 28 C.F.R. §14.2(b)(1);
- 15 9. I am informed by Mr. Simmons that plaintiff's administrative claim was never
16 transmitted by the U.S. Dept. of Fish & **Wildlife Service** (emphasis added) to
17 Animal & Plant Inspection Service, California **Wildlife Service** (emphasis
18 added) even though the administrative claim was submitted over a year before
19 the expiration of the two year statute, as required by 28 C.F.R. §14.2(b)(1);
20

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22 ///

23 ///

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10. Although plaintiff's employer did submit its claim to Animal & Plant Inspection Service, approximately two weeks before the expiration of the two year statute, I mistakenly believed that the U.S. Dept. of Fish & **Wildlife Service** (emphasis added) was the appropriate agency when I filed the claim in October of 2006 because the involved vehicle (GSA 13986) was already owned by "**Wildlife Services.**"

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 8, 2008 at Novato, CA.

DATED: July 8, 2008

LAW OFFICES OF WILLIAM G. MCDEVITT

By

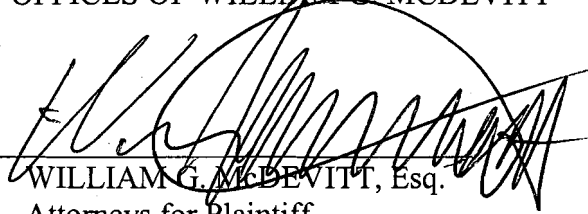

WILLIAM G. MCDEVITT, Esq.
Attorneys for Plaintiff

EXHIBIT A

BROWN & McDEVITT
ATTORNEYS AT LAW

300 Drake's Landing Road, Suite 172
Greenbrae, CA 94904
Telephone (415) 925-9212
Facsimile (415) 464-9252

Linda Joanne Brown*
Christopher H. Dahms*
Workers' Compensation

William G. McDevitt
Katherine A. Wine
Personal Injury

October 11, 2006

U.S. Dept. of Fish & Wildlife Services
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846

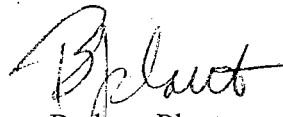
Re: Claim for Damage or Injury

Dear Sir/Madam:

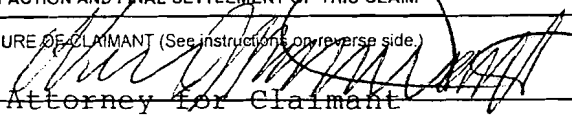
Enclosed you will find a Claim for Damage, Injury or Death regarding our client, Ron Richman. Please process the claim and return any documents, file-endorsed form, etc. to us in the enclosed envelope provided.

Thank you for your assistance and if you have any questions, feel free to call.

Very truly yours,


Barbara Plaut
Legal Assistant

WGM/bar
Enclosures

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: U.S. Dept. of Fish & Wildlife Service 2800 Cottage Way, Room W-2605 Sacramento, CA 95825-1846			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) Ron Richman c/o Brown & McDevitt 300 Drakes Landing Rd. #172 Greenbrae, CA 94904		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 10/15/56	5. MARITAL STATUS M	6. DATE AND DAY OF ACCIDENT 10/24/05	7. TIME (A.M. OR P.M.) a.m.	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) Peter Lacy was an employee of the U.S. Dept. of Fish & Wildlife. On 10/24/05 claimant was driving his truck on Buchanan Field. Peter Lacy, an employee of the Dept. of Fish & Wild. was following claimant in a vehicle owned by U.S.A. At said time and place, Peter Lacy negligently, carelessly and recklessly drove his vehicle into the rear of claimant's vehicle, which was stopped on the side of the roadway.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). Contra Costa County, 2530 Arnold Drive, Ste. 140, Martinez, CA 94553					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side.) Damage to the rear of claimant's vehicle and to the front of the vehicle driven by Mr. Lacy.					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. Cervical disk herniation and shoulder strain.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
Tom Rasmussen		1305 N.H. PMB 321, Lompoc, CA 93436			
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE Unknown	12b. PERSONAL INJURY \$250,000.00	12c. WRONGFUL DEATH		12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$250,000.00	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)  Attorney for Claimant		13b. Phone number of person signing form (415) 925-9212		14. DATE OF SIGNATURE 10/6/06	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for the civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)			

Richman v. United States of America, et al.
USDC Case No. C07-05317 JCS

PROOF OF SERVICE (Code Civ. Proc. § 1013a)

I am a citizen of the United States. My business address is 222 Rush Landing Road, P.O. Box 6169, Novato, CA 94948. I am employed in the County of Marin, where this mailing occurs. I am over eighteen years of age and not a party to the within cause. On the date set forth below, I served the attached document described as:

DECLARATION OF WILLIAM G. MCDEVITT IN OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [FED. R. CIV. P. 12(b)]

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Abraham A. Simmons
U.S. Attorney's Office
450 Golden Gate Avenue
P.O. Box 36055
San Francisco, CA 94102
Tel: (415) 436-7264
Fax: (415) 436-6748

Email: abraham.simmons@usdoj.gov

**Attorney for Defendant U.S. Department of
Agriculture**

Herb Schwartz
829 Locust Street
Garberville, CA 95542
Tel: (707) 923-2223
Fax: (707) 923-2082
Mediator

- ☒ **(BY MAIL)** I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on July 10, 2008, following ordinary business practices.
- ☐ **(BY EXPRESS MAIL OVERNIGHT DELIVERY)** I caused each envelope, with delivery fees provided for, to be deposited in a box regularly maintained by the US Postal Service. I am readily familiar with Brayton Purcell's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Brayton Purcell's business practice the document described above will be deposited in a box or other facility regularly maintained by the US Postal Service at Novato, California on the same date that it is placed at Brayton Purcell for collection
- ☐ **(BY FACSIMILE)** I caused said documents to be transmitted by facsimile machine to the number indicated after the address(es) noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 10, 2008, at Novato, California.



Krystal Correia